



INDIANA STATE BOARD OF EDUCATION

ORDER OF THE INDIANA STATE BOARD OF EDUCATION

In Re the Matter of:)	
Hamilton Heights School Corporation)	
Petitioner,)	
)	
v.)	Cause No.: 1305009
)	
)	
Fayette County School Corporation,)	
Respondent)	
)	
Determination of Transfer Tuition)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The case of *Hamilton Heights School Corporation v. Fayette School Corporation*, cause 1305009, is a transfer tuition case that presents an issue of first impression. Specifically, whether a transferor corporation must compensate the transferee corporation for the extra per pupil costs of transporting disabled students, when: 1) the student's Individualized Education Program ("IEP") did not place the student in the transferee corporation; and 2) the student's IEP did require that the student receive special transportation.

FACTS AND PROCEDURAL HISTORY

The student at the center of this case has legal settlement in Fayette School District. The student's parent placed the student at the Arcadia Development Center located within Hamilton Heights School Corporation. Arcadia is an Intermediate Care Facility for Individuals with Disabilities. Hamilton Heights transports the student to and from school at considerable costs. A special bus is used to transport the students and an aide is provided. Hamilton Heights sought reimbursement from Fayette for the transportation costs and both parties agreed that there should be reimbursement for transportation expenses, but could not agree on the amount. This resulted in an administrative hearing on September 6, 2013, before an Independent Hearing Officer ("IHO") appointed by the SBOE.

During the hearing, Hamilton Heights proposed the following formula to reflect actual costs:

Step 1 – Calculate total overhead cost by adding:

Service Area Directions - Student Transportation \$202,264.92
Vehicle Operations \$687,844.23

Monitoring Services \$62,602.41
 Vehicle Servicing and Maintenance \$485,888.16
 Insurance on Buses \$24,851.00
 Contracted Transportation Services \$73.44
 Other Student Transportation Services \$14,050.00

Total \$1,477,574.16

Step 2 – Subtract the following:

All driver costs in program (\$687,844.23)
 Insurance Proceeds (\$9,022.45)
 Revenue from towns paid for fuel (\$114,434.36)

Adjusted Total \$666,273.12

Step 3 – Determine overhead costs per pupil transported

Divide the adjusted total in Step 2 by the average number (\$666,273.12/1366.78) of bus riders at Hamilton Heights \$487.48.

Step 4 – Add totals related to the bus the student rides

Driver/Aide costs \$43,670.81
 Bus costs \$8,098.83
 Total \$51,769.64

Step 5 – Divide the total costs related to the bus the student rides (\$51,769.64/13.71) by the number of students who also ride. \$3,776.05.

Step 6 – Add Step 3 Overhead cost per pupil +\$487.48

Total Cost per student to be reimbursed by Fayette \$4,236.53

Alternatively, Fayette argued the following calculation should be used, from Form 515:

Step 1 – Calculate total overhead cost \$1,477,574.16 (same as Hamilton Heights)

Step 2 – Determine the total number of pupils transported 1368

Step 3 – Determine the Cost per Pupil Transported

Divide overhead (\$1,477,574.16) by number if pupils transported (1368) for a total of \$1,080.00.

Step 4 – Determine the daily cost per pupil

Cost of pupil in Step 3 is divided by the number of days school was in session by the cost per pupil (\$1,080.00/180) for a total of \$6.00 per day.

Step 5 – Determine the cost per pupil

Cost per pupil multiplied by total days transported equals total cost of \$1,080.00.

The ALJ found that IC 20-26-11 was applicable to this dispute because it was an issue of transfer tuition.¹ Further, the ALJ found no mention of transportation costs in IC 20-26-11 applicable to these facts; notwithstanding, the ALJ stated “not requiring the transfer school to contribute to the significant costs of transporting the moderately to severely disabled children would lead to an absurd and unfair result”.²

This left the ALJ with the situation of finding that transportation costs should be included but not having a method to calculate the amount. Consequently, he adopted the formula in Form 515.³ The ALJ acknowledged that Form 515 reads:

NOTE: Transportation can be included in the Transfer Tuition Statement ONLY in instances where the transferred students are furnished transportation by the school corporation to which they are transferred and there is a written transportation agreement between the transferor and transferee corporation.⁴

Despite the fact that there was not a written agreement in this case, the ALJ applied the formula in 515 anyway, thereby adopting Fayette’s position.⁵ This calculation spreads the costs of transportation across all students at Hamilton Heights rather than isolating the costs associated solely with the disabled transferred students (which are higher costs) and dividing from those costs only. In other words, the Form 515 formula does not amount to the actual transportation cost in situations like this where a disabled student is being provided special transportation.

CONCLUSIONS OF LAW

The issue before the SBOE is whether to adopt the ALJ’s decision and therefore Fayette’s, which uses the formula in Form 515 to calculate transportation costs, or to adopt a Hamilton Heights’ formula comprising the actual cost of transporting the student.

First, there are sections on 20-26-11 that exclude transportation costs. IC 20-26-11-13(c) and 20-26-11-22(b) exclude transportation costs in the calculation of a transferee’s operating costs, and IC 20-

¹ Hamilton Heights v. Fayette, 1305009, Proposed Finding of Facts, Conclusions of Law, and Proposed Order, Conclusions of Law, sections 1-2 (November 26, 2013).

² *Id.* at 5, 9.

³ *Id.* at 12.

⁴ *Id.* at 11.

⁵ *Id.* at 15, 21-24.

26-1-13(a)(2) excludes equipment used to transport the child from the cost calculation. In other words, the transferor school would not be on the hook for these expenses. However, these provisions do not address students with disabilities. IC 20-35-8 addresses the calculation of transportation costs for students with disabilities.

IC 20-35-8 states that:

Sec. 1. (a) Except as provided in subsection (b), if a student with legal settlement in a school corporation is transferred to attend school in another school corporation because of a disability or multiple disabilities, the transferor corporation shall:

(1) either:

(A) provide; or

(B) pay for, in the amount determined under section 2 of this chapter;

any transportation that is necessary or feasible, as determined under section 2 of this chapter and the rules adopted by the state board; and

(2) pay transfer tuition for the student to the transferee corporation in accordance with IC 20-26-11.

(b) If the student attends a school operated through:

(1) a joint school service and supply program; or

(2) another cooperative program;

involving the school corporation of the student's legal settlement, transportation and other costs shall be made in amounts and at the times provided in the agreement or other arrangement made between the participating school corporations.

(c) Student data, including ISTEP program testing scores, academic progress, grade level, and graduation date, for a student described in subsection (a) shall be included in determinations for the school corporation in which the student has legal settlement.

Sec. 2. (a) The state board shall adopt rules under IC 4-22-2 to establish limits on the amount of transportation that may be provided in the student's individualized education program. Unless otherwise specially shown to be essential by the child's individualized education program, in case of residency in a public or private facility, these rules must limit the transportation required by the student's individualized education program to the following:

(1) The student's first entrance and final departure each school year.

(2) Round trip transportation each school holiday period.

(3) Two (2) additional round trips each school year.

(b) If a student is a transfer student receiving special education in a public school, the state or school corporation responsible for the payment of transfer tuition under IC 20-26-11-1 through IC 20-26-11-4 shall pay the cost of transportation required by the student's individualized education program.

(c) If a student receives a special education:

(1) in a facility operated by:

(A) the state department of health;

(B) the division of disability and rehabilitative services; or

- (C) the division of mental health and addiction;
- (2) at the Indiana School for the Blind and Visually Impaired; or
- (3) at the Indiana School for the Deaf;

the school corporation in which the student has legal settlement shall pay the cost of transportation required by the student's individualized education program. However, if the student's legal settlement cannot be ascertained, the state board shall pay the cost of transportation required by the student's individualized education program.

(d) If a student is placed in a private facility under IC 20-35-6-2 in order to receive a special education because the student's school corporation cannot provide an appropriate special education program, the school corporation in which the student has legal settlement shall pay the cost of transportation required by the student's individualized education program. However, if the student's legal settlement cannot be ascertained, the state board shall pay the cost of transportation required by the student's individualized education program.

IC 20-35-8 shows a clear intent that the actual transportation costs be included in transfer tuition cases for disabled students. There are additional costs associated with disabled children that make transportation more expensive; it only makes sense that reimbursement be made for these costs when necessary or feasible.

Importantly, Section 2 and Section 1 of the above-quoted statute address different situations. Section 1 applies to students who attend a school outside of their school corporation of legal settlement "due to disability," thus indicating that it applies to students who have been placed by the CCC to attend the out of corporation school.

Whereas, Section 2(b) reads "If a student *is a transfer student* receiving special education in a public school, the state or school corporation responsible for the payment of transfer tuition under 20-26-11-1 through IC 20-26-11-4 shall pay the cost of transportation required by the student's individualized education program." It does **not** reference placement by the CCC or placement "due to a disability." Importantly, it uses the term "transfer student."

When a student is a "transfer student," the receiving corporation is responsible for the IEP. Whereas, when a student is placed by the CCC in a different corporation, the school corporation of legal settlement remains responsible, and the student does not constitute a "transfer student." Accordingly, IC 20-35-8-2 is a decision by the legislature to address the situation of "transfer students" who have IEPs that require special transportation. Here, the student was parentally-placed, and therefore was a transfer student. Thus, 20-35-8-2(b) applies.

IC 20-35-8 is not in the transfer tuition section of the code. However, it references 20-26-11. Further, Indiana case law is clear that:

A statute is not to be construed as if it stood solitary and alone, complete and perfect in itself, and isolated from all other laws. It is not to be expected that a statute which takes its place in a general system of jurisprudence shall be so perfect as to require no support from the rules and statutes of the system of which it becomes a part, or so clear in all its

terms as to furnish in itself all the light needed for its construction. It is proper to look to other statutes, to the rules of the common law, to the sources from which the statute was derived, to the general principles of equity, to the object of the statute, and to the condition of affairs existing when the statute was adopted. Statutes are to be so construed as to make the law one uniform system, not a collection of diverse and disjointed fragments.

Holmes v. Review Bd. of Indiana Employment Sec. Div., 451 N.E.2d 83, 86 (Ind. Ct. App. 1983). “In statutory interpretation . . . paramount consideration must be given to the basic principle that two statutes that apply to the same subject matter must be construed harmoniously if possible. *Marion County Sheriff’s Merit Bd. v. Peoples Broad. Corp.*, 547 N.E.2d 235, 237 (Ind.1989).

In the present case, the relevant transfer tuition provisions in IC 20-26-11 do not include transportation costs under the circumstances of this case. However, these provisions do not address disabled students. IC 20-35-8-2 does; hence, these statute sections should be construed together. IC 20-35-8-2 and the rules of statutory construction require the transferor school corporation to pay for the extra costs of transportation that result from servicing disabled students.

We find that a rule requiring a transferor corporation to reimburse actual costs to the transferee corporation providing special transportation to students with disabilities pursuant an IEP is fair because it ensures the transferee school is compensated for the extra cost of providing services to disabled students. This would not allow a transferee corporation to unreasonably bill the transferor corporation because the special transportation must be required by the student’s IEP. In addition, this solution is aligned with the statutory intent expressed in IC 20-35-8.

Further applying IC 20-35-8-2 to require that the school corporation of legal settlement pay “actual cost” makes sense as a policy matter because: 1) the school corporation of legal settlement receives the tax levy for these students, and transportation funds are derived from the property tax levy; and 2) to order otherwise could disincentivize outside school corporations who would otherwise have no obligation to serve these students with disabilities from accepting and serving them. (Only school corporations of legal settlement are legally required to accept and serve all students within their attendance areas). For all the foregoing reasons, we reverse the IHO’s decision and adopt Hamilton Heights’ actual transportation cost calculation.

ORDER

IT IS THEREFORE ORDERED, that the Respondent, Fayette School Corporation, pay the Petitioner, Hamilton Heights School Corporation, the actual cost to transport the student in this case.

So ordered this _____ day of May, 2014. _____
 Michelle McKeown, Interim Director
 Indiana State Board of Education

NOTICE OF RIGHT TO JUDICIAL REVIEW

Any party aggrieved by the Board's decision may seek judicial review from a civil court with jurisdiction within thirty (30) calendar days of service of this decision.

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